

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

SUN LIFE ASSURANCE COMPANY OF
CANADA,

Plaintiff,

v.

CONESTOGA TRUST SERVICES, LLC,
As Trustee of Conestoga Settlement Trust,

Defendant.

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No.: 3:14-CV-539-PLR-HBG

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion to amend the briefing schedule for dispositive motions [R. 39]. In support of the motion, plaintiff states that defendant filed a motion for summary judgment on March 8, 2016, prior to the parties completing discovery. Trial of this case has been continued to March 3, 2017, and the deadline for completing discovery is nine months away. Plaintiff requests an extension of time to respond to the motion so plaintiff may obtain discovery to properly respond to the motion. Plaintiff has conferred with defendant, however, defendant will not agree to the requested extension [R. 41].

Rule 56(d) of the Federal Rules of Civil Procedure provides that in the event that a party cannot present facts essential to justify the party's opposition, the court may (1)

defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order. *See, e.g., AT&T Corp. v. L&M Music, Inc.*, 2008 WL 4415422 at *7 (E.D.Tenn. Sept. 24, 2008) (holding it would be premature and improper to award summary judgment when discovery was not scheduled to end for five months); *Ball v. Union Carbide Corp.*, 385 F.3d 713, 719 (6th Cir. 2004) (affirming the “well established” principle that the plaintiff must receive “a full opportunity to conduct discovery to be able to successfully defeat a motion for summary judgment”).

The court finds that plaintiff has satisfied the requirements of Rule 56(d). That is, plaintiff has provided the declaration of its attorney in support of the request, identifying plaintiff’s need for discovery, the issues and facts about which plaintiff seeks to gain information, and why plaintiff has not previously discovered the information. Discovery will also assist the court to resolve the issues raised by defendant’s motion for summary judgment. Moreover, the court finds that defendant will not be prejudiced by an order allowing discovery on the claims sought to be dismissed.

Accordingly, plaintiff’s motion to amend the briefing schedule [R. 39] is **GRANTED** as follows:

1. The court will defer consideration of defendant’s motion for summary judgment;
2. Plaintiff’s response to the motion for summary judgment shall be due **October 4, 2016**;

3. Plaintiff's motion for expedited ruling or status conference [R. 40] is
DENIED as moot.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE